STATE OF CONNECTICUT

DOCKET NO. FBT CV 15 6048103-S	:	SUPERIOR COURT
DONNA L. SOTO, ADMINISTRATRIX OF THE ESTATE OF VICTORIA L. SOTO, DECEASED, ET AL.	:	JUDICIAL DISTRICT OF FAIRFIELD AT BRIDGEPORT
V.	:	
BUSHMASTER FIREARMS INTERNATIONAL, LLC, ET AL.	:	FEBRUARY 16, 2016

RIVERVIEW DEFENDANTS' MEMORANDUM OF LAW IN REPLY TO PLAINTIFFS' OMNIBUS OBJECTION TO DEFENDANTS' MOTIONS TO DISMISS DATED JANUARY 25, 2016

The Defendants Riverview Sales, Inc. and David LaGuercia (Riverview Defendants) hereby respectfully file this Memorandum of Law in Reply to Plaintiffs' Omnibus Objection to Defendants' Motions to Dismiss dated January 25, 2016.

The issue remains whether the statutory immunity afforded the Riverview Defendants pursuant to the Protection of Lawful Commerce in Arms Act 15 U. S. Code §§ 7901 et seqq. (PLCAA) enacts a lack of subject matter jurisdiction upon this Court of all matters in the instant case relating to the Riverview Defendants.

Within their Objection, the Plaintiffs clearly state that Adam Lanza entered the Sandy Hook Elementary school with "two bolt action rifles (one of which he used to kill his mother)." Plaintiffs' Omnibus Objection, Jan. 25, 2016, p. 4. The Plaintiffs' Complaint states, "In March 2010, the Riverview Defendants entrusted the Bushmaster XM15-E2s to Nancy Lanza." First Amended Complaint, Oct. 29. 2015, ¶ 182. It is apparent from their pleadings that Adam Lanza murdered the person (his mother Nancy Lanza) to whom the Riverview Defendants allegedly

entrusted the Bushmaster rifle in order that the shooter, Adam Lanza, could gain possession of the rifle, and then travel to the Sandy Hook Elementary School and perform his horrific criminal acts. The Plaintiffs imply, and in fact fail specifically to allege that this transfer of possession from Nancy Lanza to Adam Lanza qualifies as "negligent entrustment".

Subscribing to Plaintiffs' theory of "negligent entrustment" would result in a bizarre legal precedent. Under Plaintiffs' theory, an independently-owned Ford dealer would legally be liable to injured/dead pedestrians when a criminal murdered the lawful owner of Ford automobile sold two years earlier by the Ford dealer, carjacked the Ford, and then drove said Ford intentionally, murderously and criminally into a crowd of pedestrians. Under the instant Plaintiffs' misinterpretation of "negligent entrustment", the injured pedestrians could climb the "negligent entrustment" chain back through the carjacker, through the murdered driver/owner, and then engage the Ford dealer and finally the Ford Motor Company in litigation. One difference in the instant case is that the Plaintiffs do not list Adam Lanza or Nancy Lanza among their Defendants as they try to climb up their "negligent entrustment" chain.

As has been briefed extensively by the various Defendants, Congress passed the Protection of Lawful Commerce in Arms Act (PLCAA) to grant immunity from litigation to those involved in the firearms industry when criminals murder lawful owners of firearms and commit crimes using those stolen firearms.

As Plaintiffs have alleged and briefed, exceptions to the PLCAA exist. However, no exceptions apply in the instant case, also extensively briefed by various Defendants.

The Plaintiffs do not allege that the Riverview Defendants ever met Adam Lanza or ever entrusted him with anything. Therefore, the Riverview Defendants deny ever meeting him or entrusting him, negligently or otherwise, with anything at all, including a Bushmaster rifle. In fact,

the Plaintiffs allege that the Bushmaster was sold to another, namely Adam Lanza's mother, Nancy Lanza.

The Plaintiffs do not allege any commercial relationship whatsoever between the Defendants and so much as a single Plaintiff. The Riverview Defendants maintain that the Connecticut Unfair Trades Practices Act (CUTPA) was enacted to protect purchasers of products and services, and those engaged within an industry from unfair trade practices by others engaged within the industry. To try to expand the class of protected members to all people regardless of a commercial nexus would be a misinterpretation of the statue.

Use

In 1995, the United States Supreme Court grappled with the meaning of the word "use" of a firearm. In *Bailey v. United States,* 116 S. Ct. 501; 133 L.Ed. 2d 472; 64 USLW 4039 (1995) the Court reversed lower courts decisions and found that "use" of a firearm did not include possession. That court wrote as follows:

> To illustrate the activities that fall within the definition of "use" provided here, we briefly describe some of the activities that fall within "active employment" of a firearm, and those that do not.
>
> The active-employment understanding of "use" certainly includes brandishing, displaying, bartering, striking with, and, most obviously, firing or attempting to fire a firearm. We note that this reading compels the conclusion that even an offender's reference to a firearm in his possession could satisfy § 924(c)(1). Thus, a reference to a firearm calculated to bring about a change in the circumstances of the predicate offense is a "use," just as the silent but obvious and forceful presence of a gun on a table can be a "use."
>
> The example given above -- "I *use* a gun to protect my house, but I've never had to *use* it" -- shows that "use" takes on different meanings depending on context. In the first phrase of the example, "use" refers to an ongoing, inactive function fulfilled by a firearm. It is this sense of "use" that underlies the Government's contention that "placement for protection" -- *i. e.*, placement of a firearm to provide a sense of security or to embolden -- constitutes a "use." It follows, according to

> this argument, that a gun placed in a closet is "used," because its mere presence emboldens or protects its owner. We disagree. Under this reading, mere possession of a firearm by a drug offender, at or near the site of a drug crime or its proceeds or paraphernalia, is a "use" by the offender, because its availability for intimidation, attack, or defense would always, presumably, embolden or comfort the offender. But the inert presence of a firearm, without more, is not enough to trigger § 924(c)(1). Perhaps the nonactive nature of this asserted "use" is clearer if a synonym is used: storage. A defendant cannot be charged under § 924(c)(1) merely for storing a weapon near drugs or drug proceeds. Storage of a firearm, without its more active employment, is not reasonably distinguishable from possession.

Bailey at 508.

Three years later, Congress added the word "possess" to the statute at issue in *Bailey* in what is referred to as the Bailey-fix. *See United States v. O'Brien*, 560 U. S. 218, 232-33; 130 S. Ct. 2169; 176 L.Ed. 2d 979 (2010). There has been no such added wording to the PLCAA.

Plaintiffs' allege that Nancy Lanza "used" the Bushmaster firearm by buying it with the intention "to give and/or share with son in order to further connect with him" First Amended Complaint, ¶ 185. Intending to do something with the Bushmaster, but merely storing it, does not constitute "use". According to the United State Supreme Court in *Bailey*, cited above, this does not meet the "active employment" required to classify as "use".

Other

Rather than repeat the arguments and citations provided in other Defendants' replies and associated arguments, the Riverview Defendants incorporate them herein by reference and make them a part hereof.

CONCLUSION

For the above-stated reasons and those of other Defendants, the Riverview Defendants respectfully move that Counts 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, and 33 of the Plaintiffs' First Amended Complaint be dismissed.

Respectfully submitted,

DEFENDANTS RIVERVIEW SALES, INC.
And DAVID LaGUERCIA

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CERTIFICATE OF SERVICE

I hereby certify that on the February 16, 2016, I caused to be served a copy of the foregoing document on all counsel of record listed below, via the Court's ECF system.

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